

## Werner, Robert

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**From:** Barbara Watson <Barbara.Watson@Tceq.Texas.Gov>  
**Sent:** Tuesday, June 16, 2015 5:09 PM  
**To:** Werner, Robert  
**Subject:** CES Site VCP Agreement  
**Attachments:** CES Griggs Road VCP Acceptance letter and Signed VCP Agreement\_2015 6 10....pdf

Bob,

Here is a copy of the VCP agreement for the CES site.

Thank you,  
Barbara

Barbara J. Watson  
Attorney, Litigation Division  
Texas Commission on Environmental Quality  
MC-175, P.O. Box 13087  
Austin, TX 78711-3087  
Ph: 512/239-2044  
Fax: 512/239-3434

Bryan W. Shaw, Ph.D., P.E., *Chairman*  
Toby Baker, *Commissioner*  
Zak Covar, *Commissioner*  
Richard A. Hyde, P.E., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

June 10, 2015

Mr. Tony Saturni, Corporate Remediation Manager  
CES Griggs Road PRP Group  
29400 Lakeland Boulevard  
Wickliffe, OH 44092

Re: VCP Application Acceptance for the CES Griggs Road VCP site located at 4900 Griggs Road, 4904 Griggs Road, and 5910 Wayland Street, Houston, Harris County, TX; Voluntary Cleanup Program (VCP) No. 2751; Regulated Entity No. 108370644; Customer No. 604824904

Dear Mr. Saturni:

The Texas Commission on Environmental Quality (TCEQ) has received the VCP Application and supplemental environmental information submitted pursuant to §361.604 of the Texas Solid Waste Disposal Act for assistance and review of site investigation and cleanup activities for the above-referenced site. After careful review, the application is determined to be administratively complete, and is eligible for the VCP. Enclosed for your records is a signed copy of the VCP Agreement. Mr. Rodney Bryant has been assigned as the project manager for this site. Based on the VCP Agreement submittal schedule, the Affected Property Assessment Report is due by December 31, 2015. Monthly Status Reports are due on the 10<sup>th</sup> day of each month beginning July 2015.

Please reference VCP No. 2751 on the front of any future letters or reports. Future submittals should be mailed to the TCEQ, VCP-CA Section, mail code MC-221, at the letterhead address. Please feel free to contact Rodney Bryant if you have any questions by email at [Rodney.Bryant@tceq.texas.gov](mailto:Rodney.Bryant@tceq.texas.gov) or by phone at (512)239-2205.

Sincerely,

  
Anna Rodriguez Brulloths, Manager  
VCP-CA Section  
Remediation Division

ARB/DC/jdm

Enclosure: Executed VCP Agreement

cc: Mr. Jason Ybarra, Waste Section Manager, TCEQ Houston Regional Office, R-125  
Ms. Brenda Basile, Pastor Behling & Wheeler, LLC, 11231 Richmond Avenue, D104, Houston, TX 77082

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY VOLUNTARY CLEANUP PROGRAM AGREEMENT

### INTRODUCTION

This Agreement is entered into voluntarily by CES Griggs Road PRP Group (Applicant) and the executive director of the Texas Commission on Environmental Quality (TCEQ). This Agreement is not and shall not be construed as an admission of any liability under the Texas Solid Waste Disposal Act or any other law or as a waiver of any defense to such liability. No approval hereunder or receipt of funds hereby shall be taken as a warranty as to sufficiency or efficacy of the response action. The purpose of this Agreement is to detail the obligations and functions of each party, related to the voluntary response action process at the CES Griggs Road Site (Site), Voluntary Cleanup Program (VCP) No. 2751.

The activities conducted by the Applicant under this Agreement are subject to approval by TCEQ. The activities conducted by the Applicant shall be consistent with this Agreement, all applicable laws and regulations and any appropriate guidance documents. Applicant shall employ sound scientific, engineering and construction practices.

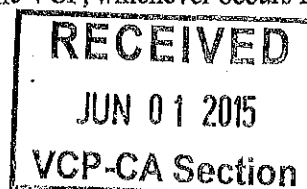
### STATEMENT OF ELIGIBILITY

The executive director has determined that the application submitted by the Applicant is complete and that the Site is eligible to participate in the VCP established under Subchapter S of Chapter 361 of the Health and Safety Code (HSC). If the TCEQ determines that the Applicant withheld or misrepresented information that would be relevant to the Site's eligibility, the executive director may exercise his/her right to withdraw from this Agreement.

The Applicant's eligibility to participate in the VCP is conditioned upon the Applicant paying all past costs expended by the TCEQ out of the Hazardous and Solid Waste Remediation Fee Account (Fund 550) for remedial and/or removal activities conducted at the Site. The costs shall be paid to the TCEQ within 45 days of the date an invoice for such costs is mailed to the Applicant(s). The Applicant's check or money order shall be made payable to the Texas Commission on Environmental Quality and shall reference the "CES Environmental Services Facility, EPA ID# TXD008950461, PCA Code 50194 and Cost Recovery Funds for the Hazardous and Solid Waste Remediation Fee Account (Fund 550) of the State of Texas." The payment shall be mailed to:

Financial Administration Division  
Attention: Cashier (MC-214)  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas, 78711-3088

The Applicant agrees to set up and maintain a website accessible to the public regarding the Site in order to keep the public informed of ongoing activities at the Site. The website shall be updated as activities are conducted at the Site. The website shall remain in existence until such time as the Site is issued a Certificate of Completion or is no longer in the VCP, whichever occurs first.



## PARTIES BOUND

This Agreement shall apply to and be binding upon the Applicant, its officers, directors, principals, employees, receivers, trustees, agents, successors, subsidiaries over which the Applicant exercises control and assigns and upon the TCEQ, its employees, agents, assigns and successors. The signatories to this Agreement certify that they are fully authorized to execute and legally bind the parties they represent. No change in ownership, corporate, or partnership status of the Applicant shall in any way alter its status or responsibilities under this Agreement unless Applicant or TCEQ withdraws from this Agreement.

The Applicant shall provide a copy of this Agreement to any subsequent business owners or successors before ownership rights are transferred. If the Applicant is also the owner of the Site, the Applicant shall provide a copy of this Agreement to prospective purchasers of the Site prior to transfer of title. The Applicant shall provide a copy of this Agreement to all contractors and consultants who are retained to conduct any work performed under this Agreement, within 14 days after the effective date of this Agreement or within 14 days after the date of retaining their services, whichever is later.

## DEFINITIONS

"Site" means the area described in the VCP application, attached and incorporated herein as Exhibit "A" or, if the executive director approves the Applicant's request to address a partial response action area, then only that portion (i.e., the partial response action area) of the area described in Exhibit "A."

## ADDRESSES FOR ALL CORRESPONDENCE

Documents, including reports, approvals, notifications, disapprovals, and other correspondence to be submitted under this Agreement, may be sent by electronic mail, hand delivery, overnight mail or by courier service to the following addresses or to such addresses as the Applicant or TCEQ may designate in writing.

Documents to be submitted to TCEQ should be sent to:

### Mailing Address

Rodney Bryant, Project Manager  
VCP-CA Section, MC-221  
P.O. Box 13087  
Austin, TX 78711-3087

### Overnight/Express Mail Address

Rodney Bryant, Project Manager  
VCP-CA Section, MC-221  
12100 Park 35 Circle  
Austin, TX 78753

Documents to be delivered to the Applicant should be sent to (include name, address and phone number):

Tony Saturni  
Corporate Environmental Remediation and Liability Manager  
The Lubrizol Corporation  
29400 Lakeland Boulevard  
Wickliffe, Ohio 44092  
(440) 347-4570 (office)  
(440) 347-4790 (fax)  
tony.saturni@lubrizol.com

## COMPLIANCE WITH APPLICABLE LAWS

All work undertaken by the Applicant pursuant to this Agreement shall be performed in compliance with all applicable federal, state and local laws, ordinances and regulations, including, but not limited to, all Occupational Safety and Health Administration, Department of Transportation and Resource Conservation and Recovery Act regulations. In the event of a conflict in the application of federal, state, or local laws, ordinances and regulations, the Applicant shall comply with the more/most stringent such laws, ordinances, or regulations, unless authorized otherwise in writing by TCEQ. Federal requirements shall be followed if they are the more/most stringent. However, as provided by HSC, Section 361.611 a state or local permit shall not be required, although the Applicant must coordinate with ongoing federal and state hazardous waste programs and must comply with the substantive requirements of an otherwise required state permit. Where it is determined that a permit is required under federal law, the Applicant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. The Applicant shall be responsible for obtaining all federal permits which are necessary for the performance of any work hereunder.

## APPLICABLE RULES AND REGULATIONS

The VCP rules, 30 Texas Administrative Code (TAC) 333, Subchapter A and the following rules or regulations are specifically designated as being directly applicable for the Site and must be followed. Citation of these rules does not imply that they are the only applicable rules.

☒ 30 TAC 350 (Texas Risk Reduction Program Rules - TRRP)  
☐ 30 TAC 334 (Petroleum Storage Tank Rules)  
☐ Other \_\_\_\_\_

## SUBMITTALS AND SCHEDULES

The following plans and reports were included with the VCP application, in this Agreement, or have been added by amendment to this Agreement:

☐ Phase I Environmental Site Assessment (ESA)  
☒ Phase II/Limited Phase II ESA  
☐ Affected Property Assessment Report - Texas Risk Reduction Program (TRRP) Rules  
☐ Response Action Plan (TRRP)  
☒ Other: EPA, TCEQ and Trustee analytical data for soil samples collected at the Site and nearby residences; EPA data for waste samples

In compliance with the aforementioned rules or regulations, the required submittals shall include a monthly status report, which describes all activities completed for the current month and those planned for the upcoming month. In order to complete the voluntary cleanup activities which are necessary for Certificate of Completion issuance, the following plans and reports will be submitted according to the schedule specified below (put anticipated date of submittal of report in blanks or NA if not applicable):

### TRRP Submittals:

Affected Property Assessment Report December 31, 2015

Response Action Plan 120 days after approval of Affected Property Assessment Report

Response Action Completion Report 90 days after completion of the response action

Response Action Effectiveness Reports If needed, every 3 years after approval of the Response Action Plan

Post-Response Action Completion Reports Not Applicable

Monthly Status Report will be submitted by the 10th of each month.

Other reports (or indicate if attached Exhibit B): Not Applicable

If the Applicant is self-implementing to Remedy Standard A, a completed TCEQ Form 10323 (Self-Implementation Notice) must be attached to this Agreement. If the Applicant is self-implementing, TCEQ will not review or comment on site-specific issues submitted by the Applicant prior to submittal of the Response Action Completion Report (RACR) or the Response Action Effectiveness Report if the RACR has not been previously submitted.

Petroleum Storage Tank Submittals:

Release Determination Report (TCEQ-0621) \_\_\_\_\_

Assessment Report Form (TCEQ-0562) \_\_\_\_\_

Plan B Risk Assessment Report \_\_\_\_\_

Corrective Action Plan Worksheets (TCEQ-0707) \_\_\_\_\_

Operation, Monitoring and Performance Report Form (TCEQ-0696) \_\_\_\_\_

Site Closure Request Form (TCEQ-0028) \_\_\_\_\_

Other Reports (or indicate if attached Exhibit B): \_\_\_\_\_

The TCEQ may terminate this Agreement if:

- 1) the aforementioned submittals are not submitted by the time frames stated above unless TCEQ approves an Applicant's revised schedule;
- 2) responses to TCEQ comments on the aforementioned submittals are not submitted in accordance with time frames provided in TCEQ comments letters; or
- 3) Applicant fails to pay past costs owed to the TCEQ for remediation and/or removal activities conducted at the Site within 45 days of the date an invoice for such costs is mailed to the Applicant.

Proposed future land use to be achieved:

☐ Residential (i.e., unrestricted)

☒ Non-residential (i.e., commercial/industrial)

☐ Other (e.g., agricultural or recreational) \_\_\_\_\_

DESIGNATED PROJECT MANAGER

On or before the effective date of this Agreement, the TCEQ and the Applicant shall each designate a project manager. Each project manager shall be responsible for overseeing the implementation of this Agreement. The TCEQ project manager will be the TCEQ- designated representative at the Site. To the maximum extent possible, communications between the Applicant and TCEQ and all documents (including reports, approvals and other correspondence) concerning the activities performed pursuant to the terms and conditions of this Agreement shall be directed through the project managers. During

implementation of this Agreement, the respective project managers shall whenever possible, operate by consensus and shall attempt in good faith to resolve disputes informally through discussion of the issues. Each party has the right to change its respective project manager by notifying the other party in writing at least five days prior to the change.

## ACCESS

To the extent that the Site or other areas where work is to be performed hereunder is presently owned or controlled by parties other than those bound by this Agreement, the Applicant shall obtain, or shall use its best efforts to obtain access agreements from the present owners. Best efforts shall include at a minimum, a certified letter from Applicant to the present owner of such property requesting an access agreement to permit Applicant, TCEQ, their authorized representatives and persons designated by the TCEQ in accordance with HSC, Section 361.752(c) access to such property. Any such access agreement shall be incorporated by reference into this Agreement. Such an agreement shall provide access for Applicant, TCEQ and authorized representatives of TCEQ, and persons designated by the TCEQ in accordance with HSC, Section 361.752(c), as specified below. In the event that such access agreement is not obtained, the Applicant shall so notify TCEQ, which may then, at its discretion, assist the Applicant in gaining access.

The Applicant shall provide authorized representatives of TCEQ access to the Site and other areas where work is to be performed at all reasonable times. Such access shall be related solely to the work being performed on the Site and shall include, but not be limited to inspecting records, operating logs and contracts related to the Site; reviewing the progress of the Applicant in carrying out the terms of this Agreement; conducting such tests, inspections, and sampling as TCEQ may deem necessary; using a camera, sound recording, or other documentary type equipment for field activities; and verifying the data submitted to TCEQ by the Applicant hereunder. The Applicant shall permit TCEQ's authorized representatives to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, which pertain to this Agreement and over which the Applicant may exercise control. All persons with access to the Site pursuant to this Agreement shall comply with submitted health and safety plans. The TCEQ does not approve health and safety plans.

## DISPUTE RESOLUTION

This section (Dispute Resolution) shall apply to any dispute arising under any section of this Agreement, unless specifically excepted. It should be noted, that as provided for in HSC, Section 361.607, the executive director or the Applicant in its sole discretion may terminate the Agreement by giving 15 days advanced written notice to the other.

The parties shall use their best effort to, in good faith; resolve all disputes or differences of opinion informally. If, however, disputes arise concerning this Agreement which the parties are unable to resolve informally, the Applicant may present written notice of such dispute to TCEQ and set forth specific points of dispute and the position of the Applicant. This written notice shall be submitted no later than five calendar days after the Applicant discovers the project managers are unable to resolve the dispute. The Applicant's project manager shall notify the TCEQ's project manager immediately by phone or other appropriate methods of communication prior to written notice, when he/she believes the parties are unable to resolve a dispute. Within ten days of receipt of such a written notice, the TCEQ will provide a written response to the Applicant setting forth its position and the basis therefore. During the five calendar days following the receipt of the response, the parties shall attempt to negotiate in good faith a resolution of their differences. If during this negotiation period, the TCEQ concurs with the position of the Applicant, the Applicant will be notified in writing and this Agreement shall be modified to include any necessary extensions of time or variances of work.

Following the expiration of the previously described time periods, if no resolution of the disputed issue(s) has been reached, the executive director shall make a determination regarding the dispute, based upon and consistent with the terms of this Agreement and will provide written documentation of such determination to the Applicant.

At this juncture, if dispute resolution fails and either or both parties exercise their right to withdraw from the Agreement by giving 15 days advance written notice to the other, only those costs incurred or obligated by the TCEQ before notice of termination of the Agreement are recoverable under the Agreement.

#### RESERVATION OF RIGHTS

TCEQ and Applicant reserve all rights and defenses they may have pursuant to any available legal authority unless expressly waived herein.

Nothing herein is intended to release, discharge, or in any way affect any claims, causes of action or demands in law or equity which the parties may have against any person, firm, partnership or corporation, not a party to this Agreement for any liability it may have arisen out of, or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any materials, hazardous substances, hazardous waste, contaminants or pollutants at, to or from the Site. The parties to this Agreement expressly reserve all rights, claims, demands, and causes of action they have against each other, and against any and all other persons and entities who are not parties to this Agreement.

The Applicant reserves the right to seek contribution, indemnity, or any other available remedy against any person other than TCEQ found to be responsible or liable for contribution, indemnity or otherwise for any amounts which have been or will be expended by the Applicant in connection with the Site.

During the term of this Agreement, TCEQ will not bring an enforcement action against Applicant for any violations of statutes or regulations for the specific violations or releases that are being remediated by this Agreement, unless the Applicant or TCEQ withdraws from this Agreement prior to completion of the response action. However, a responsible party remains liable for contamination should response action standards change or additional contamination be discovered. Non-responsible party Applicants have a release from liability upon issuance of the Certificate of Completion subject to statutory conditions in Section 361.610(c) HSC.

#### ADMINISTRATIVE COSTS

Applicant A, unless indicated otherwise in Exhibit "A", agrees to reimburse TCEQ for all of its costs associated with implementation of this Agreement. TCEQ's costs may include direct and indirect costs of overhead, salaries, equipment, utilities, legal, management and support costs associated with the review of the Applicant's work plans and reports and oversight of field activities.

The TCEQ will track all costs to the TCEQ for review and oversight activities related to the Site and provide monthly invoices to the person responsible, per this Agreement for said costs. If TCEQ costs are less than the application fee of one thousand (\$1,000) dollars, the remaining balance in the Site account will not be refunded. The Applicant shall pay these invoiced costs to the TCEQ within 30 days after the date the Applicant receives notice that these costs are due and owing. If payment is not made within 30 days after the date the second notice that these costs are due and owing is sent, the TCEQ will stop reviewing any site-related submittals. If payment is not made within 30 days after the date the third notice



is sent, the TCEQ shall terminate this Agreement and request that the attorney general bring action to recover all costs allowed by law.

Checks shall be made payable to the Texas Commission on Environmental Quality and be mailed along with a transmittal letter stating the Site name, VCP number, and addressed to the Texas Commission on Environmental Quality; MC-214; Attention: Cashier; P.O. Box 13088, Austin, Texas, 78711-3088.

In the event that this Agreement is terminated for any reason, Applicant A, unless indicated otherwise in Exhibit "A", agrees to reimburse TCEQ for all costs incurred or obligated by the TCEQ before notice of termination of the Agreement.

#### NOTICE OF BANKRUPTCY

As soon as Applicant has knowledge of its intention to file bankruptcy or no later than seven days prior to the actual filing of a voluntary bankruptcy petition, Applicant shall notify TCEQ of its intention to file a bankruptcy petition. In the case of an involuntary bankruptcy petition, Applicant shall give notice to the TCEQ as soon as it acquires knowledge of such petition.

#### INDEMNIFICATION

To the extent allowed by law, the Applicant agrees to indemnify and save and hold the State of Texas, its agencies, successors, departments, agents and employees, harmless from any and all claims, damages or causes of action arising from or on account of, the willful or negligent acts or omissions of the Applicant, its officers, directors, principals, employees, receivers, trustees, agents, successors, subsidiaries over which the Applicant exercises control and assigns in carrying out the activities pursuant to this Agreement. By entering into this Agreement, the Applicant does not assume any liability arising from the acts or omissions of the TCEQ or its agents or employees in carrying out any activities pursuant to this Agreement.

#### EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

The effective date of this Agreement shall be the date on which this Agreement is signed by the Executive Director of TCEQ or his/her authorized representative.

This Agreement may be amended by mutual agreement of TCEQ and the Applicant. Amendments shall be in writing and shall be effective when signed by the Executive Director of TCEQ, or his/her authorized representative.

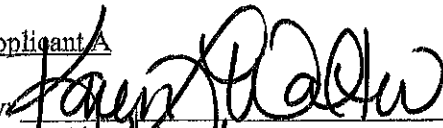
#### TERMINATION AND SATISFACTION

The provisions of the Agreement shall be satisfied when TCEQ gives the Applicant written notice in the form of a Final Certificate of Completion that the Applicant has demonstrated to TCEQ's satisfaction that all terms of this Agreement have been completed, including the selection and implementation of a response action, when appropriate.

Nothing in the Agreement shall restrict the State of Texas from seeking other appropriate relief to protect human health or the environment from pollution or contamination at or from this Site not remediated in accordance with this Agreement.

SIGNATURES

Applicant A

By:   
(signature)  
Date: 5/29/15

Name: Karen L. Walter  
(print or type)  
Title: Chairperson - CES Griggs Road PRP Group

Applicant B

By: \_\_\_\_\_  
(signature)  
Date: \_\_\_\_\_

Name: \_\_\_\_\_  
(print or type)  
Title: \_\_\_\_\_

Applicant C

By: \_\_\_\_\_  
(signature)  
Date: \_\_\_\_\_


Name: \_\_\_\_\_  
(print or type)  
Title: \_\_\_\_\_

Applicant D

By: \_\_\_\_\_  
(signature)  
Date: \_\_\_\_\_

Name: \_\_\_\_\_  
(print or type)  
Title: \_\_\_\_\_

TCEQ Representative

By:   
(signature of authorized representative)  
Date: 6/10/2015

Name: Anna Rodriguez Brulloths  
(print or type)  
Title: Manager